

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

LIBERTY BAY CREDIT UNION	)	
Plaintiff,	)	
	)	
v.	)	
	)	
OPEN SOLUTIONS INC,	)	
Defendant.	)	
	)	C.A. NO. 11-cv-10189-RGS
OPEN SOLUTIONS INC.	)	
Counterclaimant,	)	
	)	
v.	)	
	)	
LIBERTY BAY CREDIT UNION,	)	
Counterclaim Defendant.	)	
	)	

**DEFENDANT’S OPPOSITION TO PLAINTIFF’S EMERGENCY  
MOTION TO TAKE DEPOSITION OF THIRD PARTY**

Defendant Open Solutions, Inc., by and through undersigned counsel, hereby submits this memorandum in Opposition to Plaintiff Liberty Bay Credit Union’s (“Liberty Bay’s”) Emergency Motion to Take Deposition of Third Party. In support of this Opposition Defendant states as follows:

1. Discovery in this case has been ongoing since September 2011. Pursuant to this Court’s Order of April 23, 2012, all fact discovery in this case is to be completed on or before May 29, 2012.

2. On April 3, 2012, Liberty Bay noticed a 30(b)(6) deposition of a proposed third-party witness, XP Systems Corporation (“XP”) in Los Angeles, California, for April 24, 2012. Liberty Bay had also issued a subpoena seeking documents from XP.

3. XP produced documents in response to the subpoena. Prior to April 24, 2012, however, Plaintiff’s counsel informed counsel for Open Solutions that the deposition of XP would not be going forward on the scheduled date.

4. On May 22, 2012, one week before the close of all fact discovery, counsel for Liberty Bay informed counsel for Open Solutions that it wanted to take an additional day of testimony from one of Open Solutions’ 30(b)(6) designees. Due to already-scheduled business travel commitments, Open Solutions’ corporate designee was not available until June 8, 2012. However, because Open Solutions is a party to the case and because the proposed deposition was to occur in Boston, Open Solutions agreed to produce that designee for a deposition in Boston on June 8, 2012, the first date the designee was available.

5. Also on May 22, 2012, Liberty Bay informed Open Solutions that it intended to proceed with the proposed third party deposition of XP—this time in Moorpark, California—on June 1, 2012. Open Solutions objected to this deposition *both* because it was outside of the court-ordered discovery period, *and* because the proposed deposition was of an out-of-state, third party witness with less than two weeks notice of the proposed deposition date, and would therefore require Open Solutions to incur significant attorney fees and travel costs for a deposition of questionable relevance to this case. See Liberty Bay’s Emergency Motion at Exhibit 1.

6. In further support of this opposition, Open Solutions states that this case involves a contract dispute between the parties to this case. To the extent that information from XP has

any relevance to that claim, that information can be properly gleaned from the documents that have already been obtained from XP, and a deposition of XP's 30(b)(6) designee is unnecessary.

WHEREFORE, Open Solutions respectfully requests that Liberty Bay's Emergency Motion to Take Deposition of Third Party be denied.

Respectfully submitted,

DATED: May 29, 2012

By /s/ Daniel J. Cloherty  
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*Counsel for Defendant Open Solutions Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on May 29, 2012.

/s/ Daniel J. Cloherty